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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,657	12/28/2005	Victor Gonzalez De Echavarri	TJA-114US	2390
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RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			EXAMINER JOYNER, KEVIN	
			ART UNIT 1797	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,657

Applicant(s)

GONZALEZ DE ECHAVARRI,
VICTOR

Examiner

Kevin C. Joyner

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

FINAL ACTION

Election/Restrictions

1. Applicant's election without traverse of Species II in the reply filed on November 7, 2007 is acknowledged. Claim 4 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 7, 2007.

2. Newly submitted claims 5 and 6 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

It is extremely clear by the Applicant's specification that the claims 3 and 4 are distinct species of the invention, wherein the Applicant elected without traverse to prosecute the invention of claim 3. Evidence is provided throughout the specification that refers to dispensing the product directly into the outside atmosphere (corresponding to claim 3) or dispensing the product into small pipes to be treated in a dropwise manner (corresponding to claim 4). Claims 5 and 6 are a basic recitation of non-elected claim 4.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 5 and 6 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baek (U.S. Patent No. 5,957,771) in view of Kuhn (U.S. Patent No. 5,364,027) and Furner et al. (U.S. Patent No. 6,610,254).

Baek discloses a multipurpose dispenser, to dispense a product comprising:

A frame provided with a wall support means and a front cover

At least one dispensing mechanism (200) activated by driving means, and

Where said deposit incorporates a valve (222a), which in the top part thereof has a sprayer push-button (222) that is activated by a pusher element (211) driven by the movement of a first motor that is transmitted via gears,

Said first motor being controlled by a control plate, which in turn controls and combines the operation of said first motor with that of a second motor (318) that drives a fan (23) which circulates the air that is in contact with a product located in the deposit, wherein said first motor and said second motor are activated independently one from the other, to run simultaneously or alternatively, according to the control plate (304)

programming, (columns 4 & 5, lines 57-68 A& 1-19; column 6, lines 12-26; column 6, lines 35-50) as shown in Figures 4-6.

Baek does not appear to disclose two deposits, wherein a second deposit comprises a product evaporated by a cord located on the other of said deposits. Kuhn discloses a multipurpose dispenser for use to dispense a product comprising; a frame provided with wall support means and a front cover, at least one deposit (9) for a product to be dispensed, and a second deposit comprising a product evaporated by a cord (10) in order to provide an apparatus that may provide a continuous release of an aroma or an instant release of a large charge of an active substance (column 1, lines 5-40, column 2, lines 22-53). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dispenser of Baek to include a second deposit comprising a product evaporated by a cord in order to provide the dispenser with a second deposit that can continuously release an aroma over a long period of time.

Baek in view of Kuhn does not appear to disclose that the multipurpose dispenser is battery operated. Furner discloses a multipurpose dispenser for use with batteries to dispense a product comprising; a frame provided with wall support means and a front cover (Figure 1), two deposits for products to be dispensed (column 5, lines 32-54), where one of said deposits incorporates a valve, which in the top part thereof has a push-button that is activated by a pusher element (column 7, lines 55-68), and a fan that which circulates the air that is in contact with a product to be evaporated (column 14, lines 55-68). The reference continues to disclose that the dispenser uses

batteries as the power source to dispense the product (column 15, lines 1-7) in order to provide the dispenser with a power source that does not limit the portability of the device. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dispenser of Baek in view of Kuhn to include batteries as a power source for the dispenser in order to provide the dispenser with a source of power that does not limit the portability of the dispenser.

Concerning claim 2, Baek discloses that the cover comprises gratings in the top and bottom parts thereof, which cause the air current generated by the fan to circulate through them and the circulating air to come into contact with the product as shown in Figures 3 and 4. Baek does not appear to disclose gratings in the central portion of the cover. Kuhn continues to disclose that the cover (3) comprises gratings in the top, central, and bottom portions thereof, which cause the air current to circulate through them and the circulating air to come into contact with the product evaporated from the deposit by the cord in order to provide the maximum amount of vents to allow air to reach to product and ultimately dispense the product into the atmosphere (column 2, lines 24-50) as shown in Figure 2. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dispenser of Baek to include grating in the central portion of the cover in order to maximize the amount of air that is capable of reaching the product to ultimately dispense more of the product into the atmosphere as exemplified by Kuhn.

Regarding claim 3, Baek in view of Kuhn does disclose that said push-button is a sprayer push button (column 4, lines 56-68). However, Baek in view of Kuhn does not

appear to disclose that the product is dispensed directly into the outside atmosphere via a window included for this purpose in the front cover of the dispenser, in simultaneous or alternative combination with the dispensing of the product contained in the deposit by means of said gratings. Furner continues to disclose that said button is a sprayer push button (3) which dispenses the product contained in the deposit directly into the outside atmosphere via a window (20) included for this purpose in the front cover of the dispenser, in simultaneous or alternative combination with the dispensing of the product contained in the deposit (30) by means of said gratings (6) in order to provide an instant application of the product to the outside atmosphere as shown in Figure 2 and disclosed in column 7, lines 30-68. More specifically, the evaporated product is continuously given off while the sprayed product must be activated by the operator, which provides alternating or simultaneous combination of the two products. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dispenser of Baek in view of Kuhn to dispense the product directly into the outside atmosphere via a window included for this purpose in the front cover of the dispenser, in simultaneous or alternative combination with the dispensing of the product contained in the deposit by means of said gratings in order to provide an instant application of the product to the outside atmosphere as exemplified by Furner.

Response to Arguments

5. Applicant's arguments filed November 7, 2007 have been fully considered but they are not persuasive.

Applicant's principle arguments are:

(a) Applicant respectfully disagrees with the overly broad interpretation of Kuhn [that Kuhn provides a first and second deposit]. Rather, according to Kuhn, a single active substance is placed within the container. Accordingly, Applicant respectfully submits that the combination of Baek and Kuhn will still result in only a single deposit rather than the two deposits set forth in the Office Action.

As stated by the limitations in the Applicant's claim, the deposits are the items in the dispenser that dispense the product. Although Kuhn appears to dispense only a single product, the dispenser of Kuhn comprises two deposits which dispense said product. The first deposit is the immersion tube channel (9) that is connected to a sprayer and dispenses the product via a spray. The second deposit is immersion tube channel (10) that provides a wick that absorbs the product and dispenses said product in a continuous fashion. Therefore, Kuhn provides two deposits.

(b) The cited prior art fails to disclose or suggest a first motor for activating a sprayer push-button to dispense a first deposit and a second motor that drives a fan that circulates air that is in contact with a product evaporated by a cord located in a second one of the deposits where the first and second motors are activated independently from one another to operate either simultaneously or alternatively. In contrast, Applicant's invention as recited in claim 1 requires a first motor for activating a sprayer push button to dispense a first deposit and a second motor that drives a fan that circulates air that is in contact with a product evaporated by a cord located in a second one of the deposits

where the first and second motors are activated independently from one another to operate either simultaneously or alternatively.

As stated by the limitations in the claim, the first motor does not activate a sprayer push button to **dispense a deposit**. The first motor activates a sprayer push button to **dispense a product** from a deposit. As clearly described by Baek, a first motor is provided for activating a sprayer push button to dispense a product (column 6, lines 12-26), and a second motor is provided that drives a fan that circulates air throughout the dispenser (column 6, lines 36-50) wherein the first and second motor are fully capable of being activated and operating independently from one another in a simultaneous or alternative fashion. Kuhn clearly discloses a dispenser with two deposits in order to provide a continuous release of an aroma or an instant release of a large charge of an active substance. Thus, it would have been obvious to one of ordinary skill to replace the single deposit of Baek with the dual deposit system of Kuhn in order to take advantage of the continuous or instantaneous release of the aroma. This replacement would provide a dispenser with a first motor that activates a sprayer push button and a second motor that drives a fan that circulates air that is in contact with a product evaporated by a cord located in a second one of the deposits where the first and second motors are fully capable of being activated independently from one another to operate simultaneously or alternately.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin C. Joyner whose telephone number is (571) 272-2709. The examiner can normally be reached on M-F 8:00-4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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KCJ



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SUPERVISORY PATENT EXAMINER